$~R-581

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th November, 2017

\+ MAC.APP. 932/2012

NEW INDIA ASSURANCE CO. LTD. ..... Appellant

Through: Mr. Priyadarshi Acharya, Advocate

Versus

GUNMATI & ORS. ..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant), then aged 51 years, suffered injuries in a motor vehicular accident that occurred on 11.12.2010, upon being hit by a car bearing registration No.DL-5CD-3614 driven in a negligent manner. She instituted accident claim case (MACT No.272/2011) on 17.02.2011, seeking compensation. The tribunal held inquiry and, by judgment dated 10.04.2012, returned a finding that the accident had occurred due to negligence of the car driver Shyam Singh, the second respondent in the appeal. The tribunal awarded compensation in the total sum of Rs.2,28,909/- and directed the appellant to pay the same with interest, it admittedly being the insurer of the car against third party risk for the period in question. The amount was calculated thus:-

Sl. No.	Heads	Amount (in Rs.)
1.	Medical expenses	16,409/-
2.	Future medical treatment expenses	60,000/-
3.	Physiotherapy expenses	25,000/-
4.	Special diet	10,000/-
5.	Conveyance charges	10,000/-
6.	Notional income	7,500/-
7.	Pain, suffering, inconvenience frustration, hardship and trauma	1,00,000/-
	Total	2,28,909/-

2. The insurer, by the appeal at hand, submits that there was negligence on the part of the claimant herself as she was crossing the road from a place where there was no zebra crossing or any traffic light to cross the road. The insurer also questions inclusion of Rs.60,000/- towards future medical treatment expenses and Rs.1,00,000/- on account of pain and suffering, inconvenience, frustration, hardship and trauma and further takes exception to Rs.20,000/- added as counsel fee and Rs.2,000/- as out of pocket expenses for the counsel, the burden of which has been placed on the insurer.

3. Having heard the facts and circumstances of the case, all the above contentions are found to be devoid of any substance. It is noted that the evidence led before the tribunal clearly showed that the prime reason for the accident was rash driving of the car. No effort was made

during the inquiry to bring home any contributory negligence on the part of the claimant.

4. The injuries included "fracture of right inferior ischiopubic ramus and fracture ischial bone" (page 119 of the tribunal's record). Keeping in view the nature of the injuries suffered at the age of 51 years by the claimant, the awards as noted above cannot be said to be excessive.

5. There is, however, merit in the plea about the counsel fee and out of pocket expenses. The same being not justified, the directions in the impugned judgment to that effect is set aside.

6. The appeal stands disposed of in above terms.

7. By order dated 27.08.2012, the insurance company had been directed to deposit seventy five per cent (75%) of the awarded amount excluding counsel fee and out of pocket expenses. By subsequent order dated 26.05.2014 it was, however, noted that the awarded amount had already been realised by the tribunal by attachment. Therefore, the amount deposited by the insurance company was allowed to be refunded.

8. The claimant would have the liberty to enforce of the award, if there is any deficiency, by appropriate proceedings before the tribunal.

9. The statutory deposit shall be refunded to the insurer only after proof of award having been satisfied is shown.

R.K.GAUBA, J.

NOVEMBER 28, 2017/vk